



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1994

Ms. Laura S. Portwood
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-190

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 23035.

The City of Houston Police Department (the "department") received a request for information relating to a criminal investigation. Specifically, the requestor seeks:

- (1) Offense Report # 7904793W;
- (2) names of all department officers who filed reports and witness statements associated with report # 7904793W;
- (3) information relating to weapons carried, used, exhibited, and fired in report # 7904793W including the caliber, make or model, and if discharged the officer assigned the weapon; and
- (4) a copy of all reports filed with report # 7904793W including department internal affairs investigations.

You claim that parts of the requested information are excepted from required public disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.

¹We note that V.T.C.S. article 6252-17a was repealed by the Seventy-third Legislature. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

You claim that the internal affairs information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Recently, in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by a city police department for its use, and the applicability of section 143.089(g) to that information. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. The *City of San Antonio* court, however, did not comment on the availability of information contained in the police officer's civil service file. In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to transfer records relating to the investigation and disciplinary action to the city civil service commission. Such records may not be withheld under section 552.101 of the act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6.²

You have not submitted the internal affairs investigation files to us for review, and we are therefore unable to determine whether any of the internal affairs investigations resulted in disciplinary action. Accordingly, we are unable to determine the applicability of section 143.089(g) to the information in these files. We note, however, that if none of the investigations resulted in disciplinary action, information maintained by the police department that relates to such investigations must be withheld from required public disclosure under section 552.101 of the act in conjunction with section 143.089(g) of the Local Government Code. However, if any of the internal affairs investigations did result in disciplinary action, then those materials should be transferred to the civil service commission pursuant to section 143.089(a)(2) of the Local Government Code and must be released in their entirety.

²This office assumes that the city, in compliance with section 143.089(g), referred the requestor to the director of civil service for the records maintained by that branch of the city.

Section 552.108 provides as follows:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

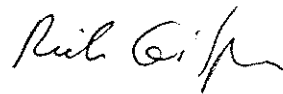
(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987); 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to the public) (copy enclosed).

You state that you have released the first page of the offense report as required by the *Houston Chronicle Publishing Co.* case. You contend that the remainder of the offense report is excepted under section 552.108 because it relates to a pending attempted capital murder case which is currently being prosecuted. Because you have shown that the requested information relates to the prosecution of an attempted capital murder case, you may withhold the requested information contained in the offense report under section 552.108 of the Government Code. As we resolve this matter under section 552.108, we need not address the applicability of section 552.103.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Open Government Section

Ref.: ID# 23035

Enclosures: Open Records Decision No. 127
Submitted documents

cc: Mr. Leslie W. Morgan, #299307
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Houston, Texas 77002
(w/o enclosures)